United Nations A/59/849–S/2005/394

General Assembly
Security Council

Distr.: General
16 June 2005
English
Original: Spanish

General Assembly
Fifty-ninth session
Agenda item 148
Measures to eliminate international terrorism

Security Council
Sixtieth year

Letter dated 15 June 2005 from the Permanent Representative of Venezuela (Bolivarian Republic of) to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith important information concerning the case of the terrorist Luis Posada Carriles, who is currently in the territory of the United States of America (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the General Assembly, under agenda item 148, and of the Security Council.

(*Signed*) Fermín **Toro Jiménez**
Ambassador
Permanent Representative

05-38801 (E) 220605 220605

Annex to the letter dated 15 June 2005 from the Permanent Representative of Venezuela (Bolivarian Republic of) to the United Nations addressed to the Secretary-General

I

An act of terrorism that shocked the international community and the peoples of the world occurred in 1976, when a Cubana Airlines flight was blown up with explosives placed in one of the toilets of the plane, taking the lives of 73 athletes.

One of the principal authors of this terrorist act, Luis Clemente Posada Carriles, a Venezuelan national, was put on trial in Venezuela on charges of aggravated homicide, manufacture of weapons of war and betrayal of his country. In 1985, the aforementioned terrorist succeeded in escaping from the penitentiary in Venezuela where he was serving his sentence and was captured by Panamanian authorities in 2000 when he attempted to carry out another terrorist act against the President of the Republic of Cuba, Fidel Castro Ruz. He was sentenced to eight years in prison by the judicial authorities of Panama and subsequently pardoned by the then President of Panama, Mireya Moscoso.

In April 2005, the Bolivarian Republic of Venezuela, on the basis of intelligence information, denounced the possible presence of the terrorist Luis Clemente Posada Carriles in the territory of the United States of America. This report was denied at the time by the Assistant Secretary of State of the United States, Roger Noriega.

Since that time, there have been a number of developments in the territory of the United States that deserve comment. First, the attorney for the terrorist announced that Luis Clemente Posada Carriles had requested political asylum in the territory of the United States on the grounds of the services that he had provided to the United States for more than 40 years as a member of the Central Intelligence Agency (CIA) and of the United States armed forces. Secondly, after the above information was made public, complaints were received from various countries over the presence of the terrorist in the United States. The reports were again denied by White House spokespersons. Thirdly, on 17 May 2005, the United States immigration authorities detained the terrorist after the fugitive from Venezuelan justice made statements on television in the United States.

II

On 13 May 2005, the Government of the Bolivarian Republic of Venezuela, through its Embassy in Washington, in accordance with the provisions of Article XI of the Extradition Treaty concluded between Venezuela and the United States on 19 January 1922, requested in a diplomatic note the remand in custody of Luis Clemente Posada Carriles and, to that end, submitted the required documents to the Legal Office of the State Department responsible for extradition mattes, which is the competent agency to which such requests must be submitted. The petition for preventive measures had been originally submitted to the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela by Criminal Court No. 36 of First Instance of the Metropolitan Area of Caracas, in conformity with article 394 of the Organizational Code of Criminal Procedure, based on the request for extradition submitted by the above-mentioned Court to the Criminal Appeals Chamber of the Supreme Court of Justice on 27 April 2005. On 2 November 1976, the then Criminal

Court of First Instance of the Judicial Circuit of the Federal District and State of Miranda determined "the guilt and consequent criminal responsibility of Orlando Bosch and Luis Clemente Posada Carriles as co-authors of the sabotage of Cubana Airlines flight No. CU- 455". For this act, Luis Clemente Posada Carriles was found guilty of being co-author of the crimes of aggravated homicide, manufacture of weapons of war and betrayal of his country and was imprisoned in various penal institutions in Venezuela from 1976 until 18 August 1985. After several attempts, he escaped on the latter date from the General Penitentiary of Venezuela, thereby evading the legal process of serving the term of imprisonment to which he had been sentenced.

On 21 August 2001, the Fourth Transitional Court of Procedure of the Criminal Judicial Circuit of the Metropolitan Area of Caracas was informed of the detention of Posada Carriles by the Panamanian authorities on 17 November 2000 in the Coral Suites Hotel of Panama City for possession of explosives, and agreed to initiate before the Supreme Court of Justice the process to secure the extradition of the terrorist by the Government of Panama. The request was submitted by the Government of the Bolivarian Republic of Venezuela to the Government of Panama in January 2001 and was denied by the Government of Panama in its Executive Decision No. 6, dated 28 February 2002.

Luis Clemente Posada Carriles was subsequently pardoned by the President of the Republic of Panama on 26 August 2004.

Since the crimes of which he is accused are not subject to prescription, Office No. 33 of the Public Prosecutor of the Metropolitan Area of Caracas requested that Luis Clemente Posada Carriles be arrested as a direct collaborator in the commission of the crime of aggravated homicide, which is covered by and punishable under article 408 (1), pursuant to article 83 of the Penal Code, for betrayal of his country, which is covered by and punishable under article 464 (3) of the Code of Military Justice, and for the manufacture of arms. On 14 April 2005, the Thirty-Sixth Court of First Instance, which has responsibility for oversight of the Criminal Circuit Court of the Metropolitan Area of Caracas, agreed to issue a warrant for the arrest of Luis Posada Carriles, in conformity with the provisions of article 5 of the Organizational Code of Criminal Procedure, and of article 49, chapter III, of the Constitution of the Bolivarian Republic of Venezuela.

On 27 May 2005, the Department of State of the United States of America denied the request for remand in custody for the purpose of extradition of the Venezuelan terrorist Luis Clemente Posada Carriles. It alleged in this regard that there was insufficient information on the facts and circumstances of the participation of Luis Clemente Posada Carriles in the crimes for which he had been convicted and sentenced.

On 1 June, the Embassy of the Bolivarian Republic of Venezuela sent a note to the Department of State in reply to the latter's diplomatic note of 27 May 2005. The note confirmed the request of the Government of Venezuela for the remand in custody of the above-mentioned citizen and our Government's wish to stress that the request for remand in custody submitted by Venezuela was fully in compliance with the established requirements for extradition requests. However, in order to provide any additional details in connection with the request in question, we undertook to supply as soon as possible additional information from the competent authorities to

permit the aforementioned remand in custody of Luis Clemente Posada Carriles for the purpose of extradition.

On 2 June 2005, by diplomatic note, the Venezuelan Government renewed its request for remand in custody for the purpose of extradition, which was submitted on 13 May 2005, and expressed its willingness to collaborate with the United States authorities in order to provide a sufficient legal basis for proceeding with the requested action. All of this was based on the Extradition Treaty in force between our two countries, the seriousness of the crimes of which Luis Posada Carriles is accused, and the principle of reciprocity.

On 10 June 2005, the Embassy of the Bolivarian Republic of Venezuela, on behalf of the Venezuelan Government, submitted the following to the United States Department of State for the purpose of the remand in custody of Luis Clemente Posada Carriles:

Additional information from the Venezuelan judicial organs on the facts and circumstances that showed the active participation of the fugitive Venezuelan citizen Luis Clemente Posada Carriles in the crime of aggravated homicide in the terrorist bombing of the Cubana Airlines flight that took the lives of 73 people, including a pregnant woman. The documents provided include abundant evidence that Luis Clemente Posada Carriles was responsible for the bombing of the aircraft, which occurred on 6 October 1976.

Copy of documents that prove the following:

(a) That Luis Clemente Posada Carriles is a naturalized Venezuelan citizen, bearer of identity card No. V 5304069;

(b) The criminal charge against the accused for aggravated homicide;

(c) Evidence of his escape from prison;

(d) Warrant of arrest against the fugitive;

(e) Evidence that the alleged intellectual author of the crime is Luis Posada Carriles. Freddy Lugo and Hernán Ricardo have been declared the material authors by the Venezuelan judicial system;

(f) Testimony of Hernán Ricardo, in which he admits that he planted the C-4 bomb in the rear toilet of the plane after having boarded the plane in Caracas, and that he informed Posada Carriles of this, referring to the passengers as dead dogs;

(g) Testimony of Marinés Vega Urbina alleging that shortly after the bombing of the plane, she called Hernán Ricardo to ask him to call Luis Clemente Posada Carriles to tell him that they had successfully carried out the operation and that they needed his assistance urgently;

(h) Testimony of Freddy Lugo, confirming his participation in the sabotage of the plane and the urgent calls made to Posada Carriles shortly after the incident to request his assistance;

(i) Statement of Luis Clemente Posada Carriles, in which he admits the existence of a relationship with the material authors who were accomplices in the crime;

(j) Statements by the officials who investigated the crime in the island of Trinidad, indicating the guilt of the individuals accused of the terrorist act;

(k) Record of the case in Venezuela, which shows that after a legal trial in the military courts, the case was withdrawn on 24 March 1983 on the grounds that it was the wrong forum. The case was subsequently sent to the ordinary criminal courts where it was still pending when, just before the court's ruling on 18 August 1985, Luis Clemente Posada Carriles escaped from the prison of San Juan de los Morros, in the State of Guárico;

(l) Evidence that the crime has not been extinguished by prescription, since, in accordance with article 110 of the Criminal Code, when an individual who is sentenced to a term of imprisonment escapes from prison, the period of prescription is suspended until a new judicial proceeding is completed.

III

The Venezuelan Government has reiterated that the Venezuelan citizen Luis Clemente Posada Carriles is subject to a judicial proceeding in Venezuela which has been temporarily suspended as a result of his escape from the penitentiary in which he had been detained. To that end, the Government of Venezuela has reiterated its request for remand in custody for the purpose of extradition and has requested the cooperation of the United States authorities in preventing Luis Posada Carriles from escaping once more from the action of the courts. Cooperation is a fundamental tool in the fight against terrorism.

Lastly, the Government of the Bolivarian Republic of Venezuela has reiterated to the Government of the United States its duty to fulfil the obligations which it assumed under the Extradition Treaty in force between our two countries. Under this Treaty, the United States authorities are obliged to extradite the terrorist Luis Clemente Posada Carriles, pursuant to the relevant bilateral and multilateral treaties in force and to resolution 1373 (2001) of the Security Council. We reject out of hand any legal artifice by the United States authorities, including deportation to another country other than ours which may serve as a refuge for the terrorist and fugitive from Venezuelan justice, to evade compliance with the obligation to extradite by which the Government of the United States of America is bound.

In keeping with its firm commitment to the fight against terrorism, the Bolivarian Republic of Venezuela has ratified numerous multilateral and bilateral, general and regional agreements in this field. It is also drafting national laws against terrorism with a view to updating its domestic laws and bringing them into line with the international regime to combat terrorism. It has also undertaken recent actions to promote international cooperation at the national, bilateral, multilateral, general and regional levels against terrorism. Noteworthy among these actions are those being carried out by the Inter-American Committee against Terrorism (CICTE). It has also adopted national measures to ensure the timely exchange of information on the prevention of and fight against terrorism.

In conclusion, we urge Member States of the United Nations to resolutely continue the fight against terrorism and to avoid double standards. The terrorist Luis Clemente Posada Carriles must be extradited to Venezuelan territory to serve his sentence for the crime committed, in accordance with criminal law and under Venezuelan jurisdiction.